

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

with a cart, which caused pain and swelling in her right foot as well as knee pain. On the reverse side of the claim form, appellant's supervisor indicated that she was injured in the performance of duty. Appellant did not stop work.

In support of her claim, appellant submitted a medical report dated November 3, 2020 from Dr. Melany A. Shearrer, a family medicine specialist. Dr. Shearrer related that appellant was seen for right foot pain and a small lump on the top of her foot, which began one month prior when a maintenance cart hit the top of her foot.

In reports dated March 10 and 12, 2021, Dr. Tamara Moseley, a podiatrist, related that a cart ran over appellant's foot in November 2020 and she noted that appellant had complaints of right foot pain, swelling, and paresthesia. In the March 12, 2021 note, she related that x-rays of appellant's foot were negative for fracture and diagnosed right foot pain.

In a March 11, 2021 report, Dr. Bhavna Lalvani, a family medicine specialist, related that appellant was seen for right knee pain, which appellant believed resulted from overcompensating from a right foot injury in November 2020.

On March 30, 2021 a physical therapist requested a consultation for a provisional diagnosis of right knee unilateral primary osteoarthritis.

OWCP received a letter dated April 8, 2021 from appellant's co-worker, M.R., and a separate letter from her co-worker, T.V. Both co-workers stated that they witnessed a maintenance cart run over appellant's right foot in October 2020. M.R. also related that appellant stated that she was in pain and held her right leg and foot following the incident.

In a development letter dated April 26, 2021, OWCP informed appellant of the deficiencies in her claim. It noted the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a report dated April 27, 2021, Matthew Randel, a physical therapist, related that appellant presented with signs and symptoms commonly associated with right foot pain, likely due to nerve and soft tissue injury.

Appellant submitted a response to OWCP's development questionnaire dated May 5, 2021. She attested that she told her supervisor of her injury three or four weeks after it occurred as she was still in pain. Appellant stated that her supervisor initially indicated that it was too late to file a claim.

By decision dated May 28, 2021, OWCP accepted that the October 9, 2020 employment incident occurred, as alleged; however the claim was denied as she had not submitted medical evidence containing a medical diagnosis in connection with her accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>6</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.<sup>8</sup>

---

<sup>2</sup> *Id.*

<sup>3</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted October 9, 2020 employment incident.

In support of her claim, appellant submitted a medical report dated November 3, 2020 from Dr. Shearrer, which related that appellant was seen for right foot pain. Similarly, OWCP received a medical report dated March 11, 2021 from Dr. Lalvani, which stated that appellant was seen for right knee pain. The Board has held that pain is a symptom and not a compensable medical diagnosis.<sup>9</sup> As these reports did not provide a firm diagnosis causally related to the accepted employment incident, they are insufficient to establish appellant's claim.

OWCP also received reports dated March 10 and 12, 2021 from Dr. Moseley, which related that appellant had right foot pain, swelling, and paresthesia. As with pain,<sup>10</sup> swelling,<sup>11</sup> and numbness<sup>12</sup> are also symptoms of a medical condition, not diagnoses. For this reason, Dr. Moseley's reports are insufficient to meet appellant's burden of proof.

Appellant also submitted were reports from physical therapists. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.<sup>13</sup> Their opinions are therefore not considered competent medical evidence.<sup>14</sup> Consequently, this evidence will not suffice for purposes of establishing entitlement to FECA benefits.<sup>15</sup>

As there is no medical evidence of record establishing a diagnosed medical condition causally related to the accepted October 9, 2020 employment incident, the Board finds that appellant has not met her burden of proof.

---

<sup>9</sup> See *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

<sup>10</sup> *Supra* note 9.

<sup>11</sup> *M.C.*, Docket No. 17-0024 (issued March 22, 2018).

<sup>12</sup> See *Leonardo G. Cobero*, Docket No. 99-2489 (issued June 1, 2001).

<sup>13</sup> 5 U.S.C. § 8101(2) provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law," 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); see also *M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

<sup>14</sup> *M.T.*, Docket No. 21-0783 (issued December 27, 2021).

<sup>15</sup> See *M.C.*, Docket No. 19-1074 (issued June 12, 2020).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted October 9, 2020 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 28, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board